

UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF VERMONT

U.S. DISTRICT COURT  
DISTRICT OF VERMONT  
FILED

2020 MAY 29 PM 12: 58

PAUL ASHLEY TESTER,


Plaintiff,

v.

ANDREW PALLITO, DELORES  
BURROUGHS-BIRON, PRISON HEALTH  
SERVICES, INC., RICK BURNES,  
CORRECT CARE SOLUTIONS,  
CENTURION, CORRECTIONS CORP. OF  
AMERICA, CORE CIVIC, KEVIN ODDY,  
JOHN DOES, and JANE DOES,

Defendants.

Case No. 2:19-cv-146

CLERK  
BY   
DEPUTY CLERK

**OPINION AND ORDER  
ADOPTING MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION  
AND GRANTING DEFENDANTS' MOTIONS TO DISMISS**  
(Docs. 14, 19, 22, & 26)

This matter is before the court for a review of the Magistrate Judge's March 9, 2020 Report and Recommendation ("R & R") (Doc. 26), wherein he recommended that the court grant the motions to dismiss filed by Defendants Andrew Pallito, Delores Burroughs-Biron, Rick Burnes, Kevin Oddy (the "State Defendants"); Prison Health Services, Inc.; Correct Care Solutions; Centurion; Corrections Corporation of America ("CCA"); Core Civic; and John and Jane Does (collectively, "Defendants") (Docs. 14, 19, 22). No party has filed an objection to the R & R, and the time period to do so has expired.

Plaintiff Paul Ashley Tester is self-represented. Defendants are represented by Geoffrey J. Vitt, Esq., Kendall A. Hoechst, Esq., Pamela L.P. Eaton, Esq., Phillipa Gage Lilienthal, Esq., and Stephen J. Soule, Esq.

A district judge must make a *de novo* determination of those portions of a magistrate judge's report and recommendation to which an objection is made. Fed. R. Civ. P. 72(b); 28 U.S.C. § 636(b)(1); *Cullen v. United States*, 194 F.3d 401, 405 (2d Cir. 1999). The district judge may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. 28 U.S.C. § 636(b)(1); *accord Cullen*, 194 F.3d at 405. A district judge, however, is not required to review the factual or legal conclusions of the magistrate judge as to those portions of a report and recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985).

On July 31, 2019,<sup>1</sup> Plaintiff filed his Complaint and asserted claims pursuant to 42 U.S.C. § 1983 based on Defendants' alleged violations of his Eighth and Fourteenth Amendment rights for failure to properly provide medical care for his shoulder injury while he was in the custody of the Vermont Department of Corrections and detained at correctional facilities in Vermont and at Defendant CCA's facility in Kentucky. Plaintiff further alleged that Defendants' conduct occurred from February 2007 to June 19, 2014.

In his twenty-four page R & R, the Magistrate Judge carefully reviewed the factual allegations and legal claims and ultimately recommended dismissal of all claims against all Defendants because Plaintiff's Complaint was filed more than three years after he was released on parole on June 19, 2014, and no basis for tolling the statute of limitation exists. *See* 12 V.S.A. § 512(4) (noting a cause of action based on "injuries to the person suffered by the act or default of another person[] . . . shall be commenced within three years after the cause of action accrues, and not after[] . . . provided that the cause of action shall be deemed to accrue as of the date of the discovery of the injury"). The court agrees with this well-reasoned conclusion and thus does not address the additional bases for dismissal which the Magistrate Judge considered.

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<sup>1</sup> As the Magistrate Judge properly observed, although Plaintiff's Complaint was docketed on August 27, 2019, the "prison mailbox rule" requires that court utilize the date on which a *pro se* inmate presented his document to prison staff for filing. *Houston v. Lack*, 487 U.S. 266, 276 (1988).

**CONCLUSION**

For the foregoing reasons, the court hereby ADOPTS the Magistrate Judge's R & R (Doc. 26) and GRANTS Defendants' motions to dismiss (Docs. 14, 19, 22).  
SO ORDERED.

Dated at Burlington, in the District of Vermont, this 29<sup>th</sup> day of May, 2020.

A handwritten signature in black ink, appearing to read 'Christina Reiss', written over a horizontal line.

Christina Reiss, District Judge  
United States District Court